

ORIGINAL

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U.S. COURTS

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RECD. _____
CAMERON S. BURKE
CLERK IDAHO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CHRIS J. DENNISON,

Plaintiff,

vs.

**CONTINENTAL CASUALTY
COMPANY**, an Illinois corporation;
**CNA GROUP LIFE ASSURANCE
COMPANY**, a wholly owned subsidiary
of Continental Casualty Company,
RURAL TELEPHONE COMPANY, an
Idaho corporation,

Defendants.

Case No. CIV 02-507-S-LMB

**DEFENDANT RURAL TELEPHONE
COMPANY'S ANSWER TO
AMENDED COMPLAINT**

COMES NOW the above-named Defendant, **RURAL TELEPHONE COMPANY**
(RTC), by and through its counsel of record, Anderson, Julian & Hull LLP, and answers
Plaintiff's Amended Complaint as follows:

FIRST DEFENSE

The Amended Complaint fails to state a claim against this answering Defendant RTC upon which relief can be granted.

SECOND DEFENSE

I.

This answering Defendant RTC denies each and every allegation of the Amended Complaint not herein expressly and specifically admitted.

II.

Defendant RTC denies the allegations contained in Paragraph 1 of the Amended Complaint.

III.

Defendant RTC admits the allegations contained in Paragraphs 4, 7, 8, and 9 of Plaintiff's Amended Complaint.

IV.

Defendant RTC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 2 and 3 of the Amended Complaint that are directed against other Defendants.

V.

Defendant RTC states that Paragraph 5 of the Amended Complaint asserts a legal conclusion to which no response is required. To the extent Paragraph 5 states facts, those facts are denied as to Defendant RTC.

VI.

With respect to the factual allegations contained in Paragraph 10 of the Amended Complaint, Defendant RTC admits that Plaintiff Chris J. Dennison filed a claim for disability benefits with the company's group long-term disability insurance plan surety. Defendant RTC states that the documents described in Paragraph 10 as Mr. Dennison's claim packet speak for themselves, and specifically denies any allegations in Paragraph 10 that are inconsistent with the claim packet actually submitted by Mr. Dennison to the surety.

VII.

With respect to the factual allegations contained in Paragraph 11 of the Amended Complaint, Defendant RTC denies the Plaintiff was terminated. Instead, the Plaintiff had informed the company that due to pain he was unable to perform his job obligations. His vacation and sick leave expired March 6, 2002. Because he had not worked since early February, 2002, the company notified Plaintiff it considered March 6, 2002, to be his separation date from the company.

VIII.

With respect to the factual allegations contained in Paragraph 12 of the Amended Complaint, Defendant RTC admits its general manager, Michael Richmond, was contacted by CNA. Defendant RTC denies the remaining allegations in Paragraph 12.

IX.

Defendant RTC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 13 through 16 of the Amended Complaint, and, therefore, denies the same.

X.

Defendant RTC states that Paragraphs 17 through 18 assert legal conclusions, to which no response is required. To the extent Paragraphs 17 through 18 state facts, those facts are denied as to Defendant RTC. Defendant RTC is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraphs 17 through 18 of the Amended Complaint that are directed against other Defendants, and, therefore, denies the same.

XI.

Defendant RTC states that Paragraphs 19, 20 and 23 assert legal conclusions to which no response is required. To the extent Paragraphs 19, 20 and 23 state facts, those facts are denied as to Defendant RTC.

XII.

Defendant RTC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 21 and 22 of the Amended Complaint that are directed against other Defendants, and, therefore, denies the same.

XIII.

Defendant RTC states that Paragraph 24 asserts legal conclusions to which no response is required. To the extent Paragraph 24 states facts, those facts are denied as to Defendant RTC.

THIRD DEFENSE

Plaintiff's claims, which are based upon alleged violations of state law, are preempted by the Employee Retirement Income Security Act (ERISA).

FOURTH DEFENSE

Plaintiff's damages, if any, were proximately caused by the superseding, intervening negligence, and omissions or actions, of other third persons, and any negligence or breach of duty on the part of this Defendant, if any, was not a proximate cause of the alleged loss to Plaintiff. In asserting this defense, this Defendant does not admit to any negligence or blameworthy conduct.

FIFTH DEFENSE

Plaintiff had, and continues to have, the ability and opportunity to mitigate the damages alleged with respect to the subject matter of this action, and has failed to mitigate said damages, if any were in fact incurred.

SIXTH DEFENSE

Plaintiff has waived, or by his conduct is estopped from asserting, the causes of action contained in his Amended Complaint.

SEVENTH DEFENSE

Other third persons, not in this Defendant's control, were guilty of negligent and careless misconduct at the time of and in connection with the matters and damages alleged, which misconduct on their part proximately caused and/or contributed to said events and Plaintiff's resultant damages, if any.

EIGHTH DEFENSE

The Plaintiff has failed to exhaust administrative remedies or remedies under the plan prior to filing this action.

NINTH DEFENSE

That the decision to deny the Plaintiff's claim for disability benefits was based upon substantial, competent evidence provided by this Answering Defendant as required under the plan.

TENTH DEFENSE

That the Court's review is limited to determining whether the decision makers acted arbitrarily or capriciously because the plan granted the decision makers discretionary authority.

ELEVENTH DEFENSE

That the Plaintiff's claims are barred in whole or in part by the plan's terms and conditions and by failure or failures of a condition or of conditions precedent.

TWELFTH DEFENSE

While denying any liability, this answering Defendant asserts that ERISA only provides for an award of benefits due under an employee welfare benefit plan and to no other element of damages.

THIRTEENTH DEFENSE

That this answering Defendant acted in accordance with the documents and instruments governing the applicable employee welfare benefit plan.

FOURTEENTH DEFENSE

Defendant RTC reserves the right to assert any additional affirmative defenses and matters in avoidance that may be disclosed in the course of additional investigation and discovery, including without limitation, comparative negligence, statute of limitations, waiver/estoppel, superseding/intervening cause, negligence of a third-party not in Defendant RTC's control and setoff.

WHEREFORE, Defendant Rural Telephone Company prays that Plaintiff take nothing by his Amended Complaint, that the same be dismissed, and that Defendant be awarded its costs of suit and attorney fees, and such other and further relief as the Court deems just.

DATED this 14th day of August, 2003.

ANDERSON, JULIAN & HULL LLP

By *James G. Murray*
for Robert A. Anderson, Of the Firm
Attorneys for Defendant Rural Telephone
Company

CERTIFICATE OF SERVICE

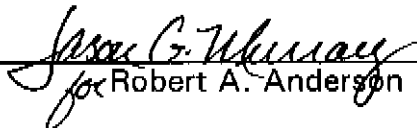
I HEREBY CERTIFY that on this 14th day of August, 2003, I served a true and correct copy of the foregoing DEFENDANT RURAL TELEPHONE COMPANY'S ANSWER TO AMENDED COMPLAINT by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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for Robert A. Anderson